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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 175

MARY E. CHEWNING

Petitioner,

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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STATEMENT OF THE CASE

The facts are sufficiently stated in the petition and will not be repeated.

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the District of Columbia involves no question of general importance and is not in conflict with any decision of this court.

A municipal corporation is not subject to garnishment.

The established rule has not been changed by the decision of this court in the case of Federal Housing Administration v. Burr.

ARGUMENT

I

The question presented is not one of general importance.

The question here presented is not one of general importance, but involves only the construction of Acts of Congress relating solely to the District of Columbia. The decision of the United States Court of Appeals is, as we shall hereafter point out, consistent with the decisions of this court.

II

A municipal corporation is not subject to process of garnishment.

By the great weight of authority, municipal corporations are not subject to garnishment for the private debts of their employees or other persons.

In *6 McQuillin on Municipal Corporations* (1936 Ed.) section 2681, page 771, it is said:

> "GARNISHMENT OF MUNICIPAL CORPORATIONS. Municipal corporations and their officers having money or property in their hands to which other persons are entitled are generally held not liable to the creditors of such persons on attachment or garnishment process unless made so by statute or charter. The principle of these cases is that public officers, who are bound to transact the public business by certain rules and in prescribed forms should not be exposed to the expense, inconvenience and hazard incident to such proceedings."

There are two reasons for this rule. In the case of *Merwin* v. *Chicago*, 45 Ill. 133, 92 Amer. Dec., 204, one of the leading cases upon the subject, the court said:

> "Although this decision is not conclusive upon the question before us as *res adjudicata*, yet the entire spirit and reasoning upon which it is based must lead us to hold that a municipal corporation is not liable to process of garnishment. The question has been often before the American courts, and although the decisions are not uniform, in a large majority of the cases it has been held the writ would not lie. The reason given for these decisions is uniformly the same, and is substantially that given by this court in the case in 25 Illinois. It must be decided as a question of public policy. These municipal corporations are in the exercise of governmental powers to a very large extent. They control pecuniary interests of great magnitude, and vast numbers of human beings, who are more dependent on the municipal for the security of life and property, than they are on either the state or the federal government. To permit the great public duties of this corporation to be imperfectly performed, in order that individuals may the better collect their private debts, would be to pervert the great objects of its creation. That its efficiency for purposes of government would be impaired by holding it liable to garnishment, cannot be doubted.
>
> "A large and growing city like Chicago must constantly have hundreds of persons in its employment; and if the city cannot at short intervals make a settlement of these multitudinous accounts, but is liable to be drawn into court at the suit of every creditor of its numerous employees, it will not only be engaged in much expensive and vexatious litigation in which it has no interest, but, if unable to safely pay its employees and contractors, it

> may lose the services of persons that may be of much value."

In the case of *Lewis* v. *Denver*, 9 Colo. App., 328, 48 Pac. 317, another leading case, it was said:

> "* * * But the salary of a public officer is a provision made by law for his maintenance and support during his term, to the end that, without anxiety concerning his means of subsistence, he may be able to devote himself entirely to the duties of his office, and the public thus have the full benefit of his knowledge and ability in the services he is selected to render. If he could be deprived of his means of support by the garnishment of his salary, presumptively, his efficiency as an officer would be impaired, if not destroyed, and the public interests would suffer serious detriment."

The question presented is not novel in this jurisdiction. It was first decided in 1872 in the case of *Derr & Thompson* v. *Lubey*, 1 MacArthur, 187. In that case a garnishment had been served upon the District of Columbia for the satisfaction of a judgment previously obtained against one Lubey, Water Registrar of the District. The District answered the garnishment admitting the payment of the sum of $500 to Lubey, the judgment debtor, after the attachment was laid, and setting up that the salary of Lubey, because he was an officer of a municipal corporation, was not subject to attachment. Counsel for the garnishor moved the court for judgment of condemnation against the District on its answer. Upon the overruling of that motion, an appeal was taken to the Supreme Court of the District of Columbia sitting in general term, where the judgment of the trial court was sustained, the court saying:

> "The decision of the Court below must be affirmed. We are all of the opinion that process of attachment will not lie to garnishee the salaries due from the District Government to its officers, on the ground of public convenience and necessity."

This case was followed by the same court in the cases of *Pottier and Stymus Manufacturing Company* v. *Taylor,* 3 MacArthur, 4, and *Brown* v. *Finley,* 3 MacArthur, 77. The Court of Appeals for the District of Columbia, in the case of *Columbia Brick Company* v. *District of Columbia,* 1 App. D. C. 351, also followed the same rule, saying:

> "It is true, the authorities upon this subject are not harmonious; and while some of the cases hold that funds in the hands of municipal corporations may be attached or arrested by garnishment, others hold that such bodies should be exempt from garnishment *only* for certain classes or species of debts due by them. But the great weight of authority is decidedly against allowing any garnishment or attachment at all in the hands of municipal corporations. It is not supposed to be within the contemplation of the legislature, unless expressly provided, because of its great inconvenience and embarrassment, and therefore against public policy."

That court then quoted with approval from the case of *Merwin* v. *Chicago,* supra.

The authorities upon this subject are collected in an exhaustive note in 56 A. L. R., 601. While some conflict upon this proposition does exist, most of the decisions can be reconciled upon a consideration of the statutes there involved. In some States the statutes specifically permit writs of garnishment to be directed against municipal corporations, and in others the statutes specifically prohibit the issuance of such writs. In

a few States the courts have construed the general statutes relating to the issuance of garnishment as broad enough to permit garnishment to be issued against municipalities. But the great weight of authority is, that, in the absence of a specific statute authorizing the issuance of such a writ against a municipality, it cannot be so issued.

In the case of *Troy Laundry & Machine Company* v. *Denver*, 11 Colo. App. 368, 53 Pac. 256, it was held that a statute, which provided that "all municipal corporations shall be subject to garnishment upon writs of attachment and executions in the same manner that private corporations and persons are now," applied only to a garnishment for a debt owed by the city to a claimant, and did not authorize the issuance of writs of garnishments for the collection of debts owed by the employees of the municipality to third persons.

The rule that a municipality is exempt from garnishment, in the absence of a statute specifically providing to the contrary, has been adopted in the following jurisdictions;

Alabama (*Skrewes* v. *Tennessee Coal, Iron & R. Co.*, 124 Ala. 629, 82 Am. St. Rep. 214, 27 So. 435).

Arkansas (*Fort Smith* v. *Quinn*, 170 Ark. 54, 278 S.W. 625).

California (*Lay* v. *Hammond*, 212 Cal. 665, 300 Pac. 10).

Colorado (*Lewis* v. *Denver, supra*).

Georgia (*Haverty Loan & Savings Co.* v. *McAfee*, 179 Ga. 673, 177 S.E. 241).

Illinois (*Merwin* v. *Chicago, supra*).

Indiana (*Wallace* v. *Lawyer*, 54 Ind. 501, 23 Am. Rep. 661).

Kansas (*Switzer* v. *Wellington*, 40 Kan. 250, 19 Pac. 620).

Maryland (*Baltimore* v. *Root*, 8 Md. 95, 63 Am. Dec. 692).

Minnesota (*Orme* v. *Kingsley*, 73 Minn. 143, 75 N.W. 1123).

Missouri (*Sheppard* v. *Cape Girardeau*, 1 S.W. 305).

Nebraska (*People* v. *Omaha*, 2 Neb. 166).

New York (*Rosenstock* v. *New York*, 101 App. Div. 9, 91 N.Y. Supp. 737).

Tennessee (*Dickens* v. *Bransford Realty Co.*, 141 Tenn. 387, 210 S.W. 644).

Texas (*Sanger* v. *Waco*, 15 Tex. Civ. App. 424, 40 S.W. 548).

Utah (*Van Cott* v. *Pratt*, 11 Utah, 209, 39 Pac. 827).

Vermont (*Bradley* v. *Richmond*, 6 Vt. 121).

Wisconsin (*Merrell* v. *Campbell*, 49 Wis. 535, 5 N.W. 912).

We submit that the decision of the court below is in accord with the great weight of authority.

III

The established rule has not been changed by the case of Federal Housing Administration v. Burr.

Counsel for appellant relies upon the recent decision of this Court in the case of *Federal Housing Administration* v. *Burr*, 309 U.S. 242, in which it was held that the administrator of the Federal Housing Administration, since he was authorized by Congress "to sue and be sued in any court of competent jurisdiction, State or Federal", was also subject to process of garnishment. But this court did not hold, as counsel for appellant contends it did, that the authority to sue and be sued necessarily subjects one to garnishment. This court merely construed the statute there involved, and determined the intent of Congress as expressed therein. The Federal Housing Administration was created by Congress and authorized, as stated by this court, "to engage in commercial and business transac-

tions with the public." Its activities were similar to those of private corporations. That this Court recognized the distinction between a corporation of this character and a municipal corporation is apparent from the following excerpts from its opinion:

> "* * * In the absence of such showing, it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to 'sue or be sued,' that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.
>
> "* * * Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used those words in their usual and ordinary sense. State decisions barring garnishment against a public body though it may 'sue and be sued' are not persuasive here as they reflect purely local policies concerning municipalities, counties and the like, and involve considerations not germane to the problem of amenability to suit of the modern federal governmental corporation."

The District of Columbia is not a "modern federal governmental corporation" authorized "to engage in commercial and business transactions with the public", and "launched * * * into the commercial world", but is a municipal corporation possessing not only the ordinary governmental functions of a municipality, but in addition many functions ordinarily performed by a State,—for example, the maintenance of penal and correctional institutions for the incarceration of persons convicted of crimes against the sovereignty; the maintenance of a department of insurance and an office for the licensing and titling of automobiles and the issuance and revocation of operators' permits. Both this court and the United States

Court of Appeals for the District of Columbia have held that the District of Columbia exercises governmental functions, such as the sprinkling of streets to keep down dust (*Harris* v. *District of Columbia*, 256 U.S. 650); designing of sewers (*Johnson* v. *District of Columbia*, 118 U.S. 19); maintenance of a fire department (*Brown* v. *District of Columbia*, 29 App. D.C. 273); maintenance of public schools (*District of Columbia* v. *Tyrrell*, 41 App. D.C. 463); disinfection of dairies (*Coates* v. *District of Columbia*, 42 App. D.C. 194); maintenance of a workhouse (*District of Columbia* v. *Totten*, 55 App. D.C. 312, 5 Fed. (2) 374); maintenance of sprinkler on streets for the comfort, amusement and pleasure of children (*Tillman* v. *District of Columbia*, 58 App. D.C. 242, 29 Fed. (2) 442); installation of fire control boxes (*District of Columbia* v. *May*, 63 App. D.C. 10, 68 Fed. (2) 755), and collection of garbage, (*Loube* v. *District of Columbia*, 67 App. D.C. 322, 92 Fed. (2) 473).

Attention is also invited to recent cases decided by this court, which did not arise in the District of Columbia, in which this court held certain functions which are performed by the District to be governmental. These are maintenance of a police department (*Indian Motocycle Co.* v. *United States*, 283 U.S. 570, 579) and the maintenance of a water department (*Brush* v. *Commissioner of Internal Revenue*, 300 U.S. 352).

In this case it will be noted that the employee whose wages are sought to be attached is a nurse at Gallinger Municipal Hospital. The maintenance of the hospital is undoubtedly a governmental function.

In the *Burr* case, this court distinguished from the case of *Buchanan* v. *Alexander*, 4 How. 20. In the *Buchanan* case this court said:

> "The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem, cannot, in this

respect, be distinguished from any other disbursing agent of the government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers, and men of the army and of the navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service.

"The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by State process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen."

The attention of this court is invited to the several provisions of law applicable to the disposition of the District of Columbia funds set forth in Title 20, Chapter 4, D. C. Code of 1929, under the heading "Finances", from which the following excerpts are quoted:

"The Collector of Taxes for said District shall collect all revenues of the District and deposit the amounts collected daily with the Treasurer of the United States." (Sec. 628)

"All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropri-

ations made by Congress for the expenses of the District of Columbia, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the Auditor of the District of Columbia, certified by said Commissioners, or a majority of them; * * *". (Sec. 634)

"All monies appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of Section 634 of this Title, and shall be drawn therefrom only on requisition of the Commissioners of the District of Columbia, such requisition specifying the appropriation upon which the same is drawn * * *." Sec. 635).

By the Act relating to the office of the Disbursing Officer of the District of Columbia (Title 20, Sec. 638, D. C. Code of 1929), it is provided:

"The disbursing officer shall be appointed by the Commissioners, and shall give bond to the United States in the sum of fifty thousand dollars, for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and all persons interested conditioned for the faithful performance of the duties of his office in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands * * *."

The disbursing officer of the District of Columbia is thus the agent of the United States as well as of the District of Columbia, and the case of *Buchanan* v. *Alexander*, supra, applies to the District of Columbia.

The time consumed in the preparation of answers to the interrogatories propounded in a writ of garnishment is by no means small. If it be held that such a writ may be served upon the disbursing officer, he must compute the amount due the employee whose wages are garnished and gather such other information as may be called for by the interrogatories propounded. All of this he must forward to the Corporation Counsel for the preparation of the answers. Should the disbursing officer make an error in computing the amount due the employee, or, should, in the press of public affairs, the employee's salary be paid him after the writ has been served, or should the answer to the writ not be filed within time, the District would be required to pay to the judgment creditor money of the taxpayers which was not legally due the employee. Frequently questions arise in garnishment proceedings as to just what is the amount due from the garnishee to the judgment debtor. The District thus would be drawn, at the expense of the taxpayers, into vexatious litigation in which it has no interest. When we consider that the District has upwards of 12,000 employees and, in addition, from time to time owes money to numerous contractors, and other creditors, it will be seen that, if it now be held that the District is subject to garnishment, a large increase will be necessary in the personnel of the disbursing office and the corporation counsel's office to care for the additional duties thus entailed—duties which have no relation to the purposes for which the municipal corporation was created.

Inasmuch as this court, in the *Burr* case supra, based its decision on the implied intention of Congress to waive the immunity of the Federal Government from suit with respect to "a governmental agency" launched "into the commercial world", the question here necessarily is whether there was any implied intention on the part of Congress in creating the District of Columbia a municipal corporation to waive the immunity ordinarily existing as to such a corporation. A

review of the legislative history of the District of Columbia may be helpful.

By the Act of May 3, 1802, incorporating the City of Washington, (2 Stat. 195, D. C. Code of 1929, page 450) it was provided that the City of Washington "may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons". We have been unable to find any case, and counsel for appellant cites none, where it has been held that this language rendered the City of Washington liable to garnishment. On the other hand, it was held in 1855, in the case of *Baltimore* v. *Root*, 8 Md. 95, 63 Am. Dec. 692, that the City of Baltimore was not subject to garnishment although its charter contained the same language with respect to liability to suit as did the charter of the City of Washington. It must be remembered that the land now forming the District of Columbia was originally part of the State of Maryland. The first Act creating the District of Columbia a municipal corporation was not passed until after the decision of the Maryland court in the *Baltimore case*. (Act of February 21, 1871, 16 Stat. 419, D. C. Code of 1929, page 469.) Under this Act the District of Columbia was authorized to "sue and be sued, plead and be impleaded". In 1872, in the case of *Derr & Thompson* v. *Lubey*, 1 MacArthur 187, the Supreme Court of the District, sitting in general term, the then highest court in the District, held that by these words Congress did not intend to waive the immunity of a municipal corporation from garnishment. On June 20, 1874, Congress passed the temporary Organic Act, 18 Stat. 116, D. C. Code of 1929, page 474, which repealed the provisions of the Act of 1871 relating to the method of government of the District and set up temporarily a commission form of government, but left unchanged the provisions of the Act of 1871 with respect to the liability of the District to suit. Thereafter the two cases of *Pottier & Stymus Manufacturing Company* v. *Taylor*, 3 MacArthur, 4, and *Brown* v. *Finley*, 3 MacArthur, 77, were decided, in which the ruling of the court in the *Derr* case was followed.

Then came the present Organic Act, the Act of June 11, 1878, 20 Stat. 102, D. C. Code of 1929, page 477, by which it was provided in section 1:

> "The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes relating to said District."

Section two of the Revised Statutes relating to the District of Columbia (Sec. 2, Title 20, D. C. Code of 1929.) was taken from the Act of 1871 and reads as follows:

> "Sec. 2. The District is created a government by the name of the District of Columbia, by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this title."

Thus Congress, by the present Organic Act, adopted the language of the Act of 1871 with respect to the liability of the District to suit, which language had already been construed by the highest court of this District as not constituting a waiver of the immunity of a municipal corporation from process of garnishment. It is a well recognized rule of construction that the presumption is that, where Congress adopts in a later Act words which have received a judicial construction in an earlier Act relating to the same subject matter, Congress adopted such words with the previous construction in mind.

In the case of *Grover & Baker Sewing Machine Company* v. *Florence Sewing Machine Company*, 18 Wall. 553, 584, this court said:

> "* * * the well established rule applies in construing the later act, that words and phrases, the meaning of

> which in a statute have been ascertained by judicial interpretation, are, when used in a subsequent statute, to be understood in the same sense."

See also:

Mobile Trade Co. v. *Lott*, 12 Wall. 221, 224,
The Abbotsford v. *Johnson*, 98 U.S. 440,
Greenleaf v. *Goodrich*, 101 U.S. 278, 281,
United States v. *Mooney*, 116 U.S. 104,
Logan v. *United States*, 144 U.S. 263, 301,
Armstrong Co. v. *Nu-Enamel Corp.*, 305 U.S. 315, 332.

The same rule has been applied even in cases where the interpretation of the language in the prior statute was not judicial but merely administrative. *Brewster* v. *Gage*, 280 U.S. 327, 337, *Helvering* v. *Reynolds Co.*, 306 U.S. 110, 114, 115.

The *Columbia Brick Company* case was decided by the Court of Appeals in 1893, forty-eight years ago. Had this decision misinterpreted the intent of Congress, Congress has had ample time to correct the error. By failing to take action it may be assumed that Congress is satisfied with the law as there construed.

Counsel for petitioner contends that, because the teachers' retirement Act provides that retirement pay shall not be assignable or be subject to attachment, garnishment, or other legal process, it follows necessarily that Congress intended that in all other cases the District should be subject to garnishment. We contend on the other hand that Congress intended to insure to teachers who had grown old in the service a means of livelihood free from the claims of creditors even after the retirement pay had come into the hands of the teacher.

Counsel for petitioner also lays stress upon the fact that an employee of the District may sue for his salary. We do not deny that the District of Columbia may, by an appropriate

proceeding, be compelled to pay to an employee the salary he has earned, but that is a far different matter from requiring the District to pay over to some third party the salary due such employee.

CONCLUSION

We respectfully submit that the decision of the court below was correct, and that the petition for writ of certiorari should not be granted.

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